THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Wednesday, the first day of Feburary,

two thousand and six .

W.P.No.17846 of 1996

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Kummari Gurumurthy and others.

….Petitioners.

And:

The Government of Andhra Pradesh, represented

by its Secretary, Revenue Department, Secretariat,

Hyderabad and others.

……..Respondents.

O R D E R:

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Subsequent to the filing of the writ petition, 1st petitioner died and so petitioners 4 to 8 were brought on record as legal representatives of 1st petitioner.

2) The case of the petitioners is that Ac.2-07 guntas in S.No.98 belonging to the first petitioner was acquired in 1969 for the purpose of digging Nagarjuna Sagar left canal, after paying compensation, and after completion of the project work,

it came to light that about 1800 Sq. yards only from out Ac.2-07 guntas land acquired from the 1st petitioner was utilized for the project and about Ac.0.24 guntas thereof is used for laying of a road and since the remaining extent of land is not utilized for the purpose for which it was acquired and is lying vacant, and since some other owners whose lands also were acquired and whose total extent was not utilized for digging the canal sought for reconveyance of the unutilized land and could regain possession by obtaining an order from this Court, 1st petitioner made a request for reconveyance of the land by offering to refund the compensation paid to him, and since no action was taken thereon, he filed W.P.No.1342 of 1992 for reconveyance of the land in S.Nos.283 and 284, which was disposed of on 29.2.1996 with a direction to the authorities concerned to consider the representation made by the first petitioner on 13.1.1992 for reconveyance of the land, and as no action is being taken on the said representation of the 1st petitioner, they filed this petition for a direction to the respondents to reconvey the unutilized land after taking return of the compensation paid to the 1st petitioner.

3) Though, this petition was filed in 1996, respondents did not file their counter affidavits till today. 4) The contention of the learned counsel for the petitioners is that inasmuch as the 1st petitioner was solely depending on the earnings from the land that was acquired, and since the entire acquired land was not utilized for the purpose for which it was acquired, and in the land which was not utilized for the project and is lying vacant, third parties are trying to make encroachments, and since no action was taken by the respondents in respect of the land in S.No.283 and 284 in spite of the direction in W.P.No.1342 of 1992 to consider the representation and pass appropriate orders, a direction may be issued to the respondents to reconvey the unutilized land in S.No.98 acquired from the 1st petitioner.

5) Since the land was acquired for the purpose of digging Nagarjuna Sagar left canal, which is a public purpose, as per Section 16 of the Land Acquisition Act, when the award is passed and land was taken possession of, it absolutely vests with the Government free from all encumbrances. So, the land that was acquired from the 1st petitioner, from whom possession was taken and compensation paid, became the property of the Government. So, merely

because some portion of the land acquired is not utilized for the purpose for which it was acquired, the erstwhile owner of the acquired land cannot seek reconveyance on that ground of not utilization, by offering to return the compensation paid to him, because question of withdrawing the acquisition, after the land vested in the government, does not arise, as held in **Lt. Governor of Himachal Pradesh and another Vs. Avinash Sarma[1].** In **Gulam Mustafa & others Vs. The State of Maharastra and others[2]** the apex court held that when title vests in be beneficiary as a result of acquisition, how it uses the excess land is not the concern of the original owner, and so he cannot, on the basis that the land was not utilized for the purpose for which it was acquired, seek an order invalidating the acquisition. In view thereof petitioners cannot, merely on the ground that respondents did not make use of the land for the purpose for which it was acquired, seek a direction to the respondents for re-transfer of the land to them.

6) If the petitioners are interested in getting back possession of the land, they have to make an application for that purpose under relevant rules, and depending upon their eligibility or otherwise respondents would consider their application. But merely on the ground that the land acquired from them is not utilized for the purpose for which it was acquired, the petitioners, as of right, cannot claim to re-transfer the same by offering to refund the compensation paid to them.

7) Hence, the writ petition is dismissed. No costs.

JUSTICE C.Y.SOMAYAJULU

1st February 2006.

BCS

L.R.Copy to be marked.